

FINAL STATEMENT OF REASONS
CALIFORNIA CODE OF REGULATIONS
TITLE 21. PUBLIC WORKS
DIVISION 1. DEPARTMENT OF GENERAL SERVICES
CHAPTER 1. OFFICE OF THE STATE ARCHITECT

**SUBCHAPTER 2.5 VOLUNTARY CERTIFIED ACCESS SPECIALIST
PROGRAM**

Chapter 872, Statutes of 2003 (Senate Bill 262) calls for the State Architect to establish and publicize a new voluntary Certified Access Specialist Program, requiring the publication of comprehensive regulations as a new subchapter under Chapter 1, *Office of the State Architect*, of Division 1, *California Code of Regulations*, Title 21, *Public Works*.

This regulation will establish the procedure to be followed by the State Architect for implementation of the voluntary Certified Access Specialist Program.

The proposed regulation as originally noticed to the public clearly outlines the requirements a candidate has to meet for certification, recertification, and also enforcement of disciplinary measures after certification. However, in response to comments from the public, the Division of the State Architect has made the following changes to the regulation.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE
PERIOD OF MAY 29, 2007 THROUGH JUNE 8, 2007.**

COMMENT NO. 1: James D. Maletic, Individual (see Comments Tab D1) stated that he agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 2: Scott E. Woody, Architect, (see Comments Tab D2) objected to Article 4 (fees) Section 141 of the regulations based on the reason that a fee structure should be affordable for a Voluntary program. Thus, his suggested amendment to Article 4 (fees) Section 141 is to reduce the fee amounts comparable to architectural license fees.

Response: DSA noted the suggested amendment on the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 3: Arnie Pike, Individual (see Comments Tab D3) did not agree with this regulation on Section No. 114 and was opposed to the fact that only design professionals could perform the scope of work defined under Section 114.

Response: DSA agrees with the comment and has modified the language of the text in Section 114 to indicate that architects and other design professionals are able to perform the services specified in Section 113, CASp Scope of Work, under the purview of their license or registration. The Certified Access Specialist (CASp) certification is only issued to those who have achieved a passing score on the CASp examination and complete fifteen (15) Continuing Education Units (CEU's) during each subsequent three year period of certification.

COMMENT NO. 4: Christopher Lawrence, HMC Architects (see Comments Tab D4) stated that he agrees with this regulation and is in support of it. His comment was that the Voluntary Certified Access Specialist program is an essential component toward education and the implementation of access laws and codes.

Response: No response necessary

COMMENT NO. 5: Kim Blackseth, ICC, ACD (see Comments Tab D5) Stated that he would like to offer his full support for the CASp program. However, he does have a suggested amendment. The suggested amendment is that the criteria for a complaint and the "measuring stick" for CASp should be more detailed than "generally accepted industry standards" as "generally accepted industry standards" are the baseline and he thinks that more detailed and accountable criteria is necessary.

Response: DSA agrees with the comment. Reference to "industry standards," has been deleted from Section 151.(a) 3 of the regulations. DSA will determine the factual correctness of submitted complaints under the statutory authority of Government Code, Section 4459.8.

COMMENT NO. 6: Laura E. Williams, President, Californians for Disability Rights, Inc. (see Comments Tab D6) requested a public hearing stating that the critical impact that a CASp program will have on access and inclusion for the 6.2 million Californians with disabilities requires more than just public comments.

Response: DSA held a public hearing on July 13, 2007

COMMENT NO. 7: Ruthee Goldkorn, Executive Board Member, CDR (see Comments Tab D7) requested a public hearing stating that public hearings are critical to the understanding of the process and the goals so that stakeholders have the opportunity to see, hear, be seen and be heard at and by the highest levels.

Response: DSA held a public hearing on July 13, 2007

COMMENT NO. 8: Lisa Williams, Individual (see Comments Tab D8) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 9.01: Lila Levinson, ASID, CKD, CID (see Comments Tab D9) does not agree with the regulation and is opposed to it especially in relation to the fees amount stating that the cost of \$1070 for the Certification Fee is excessive both for the initial certification and for the renewal certification.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 9.02: Lila Levinson, ASID, CKD, CID (see Comments Tab D9) stated that more emphasis should be on CEU's than on money for the renewal. Since DSA has such stringent exams it should not be necessary to have expensive testing every three years. Allow CEU's from related industry organizations to qualify for the renewal and keep the expenses down. To also find a way to keep the initial application costs down.

Response: DSA agrees with the comment. The State Architect has determined that in lieu of a recertification examination, the completion of fifteen (15) Continuing Education Units (CEU's) of classes in Federal and State access regulation updates and Universal Design, during the tri-annual period of certification will qualify a certificate holder for recertification. These classes should address changes to the laws and regulations identified in Section 134.

COMMENT NO. 10: Douglas R. Stead, California Council for Interior Design Certification, Inc. (see Comments Tab D10) stated in support of with the following suggested amendment. That the Certification Board (CCIDC) would like the words "Interior Designer" changed to "Certified Interior Designer". There is no definition in California law of "Interior Designer", only "Certified Interior Designer" as contained in section 5800 of the Business & Professions Code. Certified Interior Designers must have a combination of education, examination or experience whereas anyone can call himself or herself an interior designer without any education, examination or experience.

Response: DSA disagrees with the suggested amendment. The use of the language proposed by the commenter would limit others within the design community from qualifying to take the CASp examination.

COMMENT NO. 11: Paul Morgan, AIA (see Comments Tab D11) is opposed to Article 4, Section 141 of the regulations because the fees are way too high and will discourage a very large number of otherwise knowledgeable professionals from participating in the program.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 12: James Brogan, Architect (see Comments Tab D12) stated that he is in support because a license of this type would help provide consistency for compliance with accessibility regulations but he suggests lowering the required fees for this program to be consistent with other professional licenses.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 13: Francie Moeller, Chair CDP Disabilities Caucus (see Comments Tab D13).

Responses to 13.01 through 13.15

13.01: Francie Moeller comments on Section 111. The stated purpose is wrong. The purpose of these regulations was to identify competent people to do access work, and it is not to establish a procedure for implementing the regulations.

Response: DSA disagrees with the comment. It is necessary to restate the purpose of the program as described in the statute at the beginning of the proposed regulations.

13.02: Francie Moeller comments on Section 112. SB 262 says that the State Architect is supposed to determine the criteria for “a certified access specialist,” but that is not what the proposed regulations say. None of the knowledge areas specified in Section 2 of SB 262 are provided in these regulations, except testing which is still vague and unclear. No criteria to review, inspect or advocate universal design, no specified training, no testing for disability awareness.

Response: DSA disagrees with the comment. The authority is specific to Government Code (GC) 4459.5 which directs the State Architect to establish a program for voluntary certification of any person who meets specified criteria and testing to determine competency as a certified access specialist.

13.03: Francie Moeller comments on Section 113. The specific purpose of the regulation on scope of work is not to establish a procedure for implementing the regulations for the “State Architect or his Designee.” There is no procedure in 113 except a statement to limit CASP persons to do only three things. There is nothing in the authorizing legislation that limits what an access specialist can do.

Response: DSA disagrees with the comment: The statute requires the State Architect to “establish... a program for voluntary certification”. This regulation clarifies that a certified access specialist (CASP) may observe, report and defer to others, their observations and findings.

13.04: Francie Moeller comments on Section 114. Much of access is done by design professionals who are not architects or engineers. This says that CASP persons cannot provide expertise to owners, architects, government. This is not authorized in the stated 4459.5- 4459.8, Government code. This seems to say that the CASP scope is limited to only Design Professionals.

Response: DSA agrees with the comment. The title of Section 114 may have been viewed as confusing as to its intent by those not licensed as Design Professionals and, therefore, the regulation has been clarified as to its intent.

COMMENT NO. 13: Francie Moeller, Chair CDP Disabilities Caucus (see Comments Tab D13)

13.05(a): Francie Moeller comments on Section 121. The definitions do not define Design Professional.

Response: DSA agrees with the comment. The modified text in Section 114 now clearly defines the services of a "design professional" as it relates to services specific to those with a CASp certification.

13.05(b): Francie Moeller comments on Section 121. The definitions do not define exam courses.

Response: DSA agrees with the comment. The term "exam courses" is not used in the regulation text. Section 134 of the regulations identifies areas of study for which Certified Access Specialists will be required to demonstrate their knowledge, skills, and abilities.

13.05(c): Francie Moeller comments on Section 121. The definitions do not define standards.

Response: DSA agrees with the comment. The term "generally accepted industry standards" has been deleted from Section 151 of the regulations.

13.05(d): Francie Moeller comments on Section 121. The definitions do not define experience.

Response: DSA agrees with the comment. The term "qualifying experience" is clarified in Section 133. This to establish that the applicant has a minimum of knowledge, skills, and abilities with which to be eligible to take the CASp examination.

13.06: Francie Moeller comments on Section 131. This is unclear as it does not say who is really eligible. Please explain and justify why completing an application is the only reason required to be considered.

Response: DSA disagrees with the comment. Completion of the application is necessary to determine that the applicant meets the minimum qualifications necessary to be able to take the CASp examination.

13.07: Francie Moeller comments on Section 132. It should not say "may", it should say criminals **MUST** provide information, or **MUST** be denied participation.

Response: DSA agrees with the comment. Proposed text of Section 132 has been modified to substitute "shall" for "may".

13.08(a): Francie Moeller comments on Section 133. None of the education and experience requirements include any training with cross-disability awareness, nor do these jobs require any experience with using civil rights law, understanding federal law, or even necessarily all the access codes. How does working for a city teach a person how to do accessibility? Just because you are a registered architect, engineer or work for planning does not mean you have any special knowledge of doing access. Why would experience as a landscape architect be "determining criteria" for an Access Specialist? Paragraph C is the only criteria that matters.

Response: DSA disagrees with the comment. Experience gained as a plan reviewer, building official or inspector for a local jurisdiction provides experience in the application of the access elements of the CBC.

13.08(b): Francie Moeller comments on Section 133. Where are the courses that are required by SB 262?

Response: DSA disagrees with the comments. There are no courses specifically required by statute. Section 133 establishes the minimum education and experience necessary to take the CASp examination.

COMMENT NO. 13: Francie Moeller, Chair CDP Disabilities Caucus (see Comments Tab D13)

13.09: Francie Moeller comments on Section 134. None of the knowledge tests for disability awareness. It does not test for knowledge of construction, discrimination laws, or how to provide any of the services expected of a competent CASP.

Response: DSA disagrees with the comment. The examination content is based upon standards governing access to buildings for persons with disabilities, including those referenced in Section 134.

13.10: Francie Moeller comments on Section 135. This regulation says the exam will be scored according to standards "SUCH AS" certain standards, but does not say for sure WHICH standard or score required 50%, 75% 100? This section does not say exactly how it will be scored or who will score it. It does not describe the different areas to study or where to go for courses.

Response: DSA disagrees with the comment. The State Architect entered into a contract with Cooperative Personnel Services dba CPS Human Resource Services to develop and validate the Certified Access specialist examination. The examination is based on the professional standards identified in Section 135. The passing score necessary for certification will not be determined until after the administration and validation of the first examination.

13.11: Francie Moeller comments on Section 136. This section does not say that the renewal exam will use the standards mentioned in Section 135 either.

Response: DSA agrees with the comment. The State Architect has determined that in lieu of a recertification examination, the completion of fifteen (15) Continuing Education Units (CEU's) of classes in Federal and State access regulation updates, and Universal Design, during the tri-annual period of certification will qualify a certificate holder for recertification. These classes should address changes to the laws and regulations identified in Section 134.

13.12: Francie Moeller comments on Section 141. The fees of \$1,926 is too high to be justified and is designed to prevent people with disabilities from becoming certified CASP. These fees are to limit the program to business and corporations rather than experienced people with disabilities. Renewal is \$1,400 dollars, so the cost is \$3,300 IN THE FIRST THREE YEARS.

Response: DSA notes the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

13.13: Francie Moeller comments on Section 151. No grounds for discipline established. Requirements have nothing to do with access. No prescription as to what papers must be filed, what rules must be followed or what is not allowed. Seems to be totally arbitrary and is indicating that nothing will be enforced by the Office of the State Architect.

Response: DSA disagrees with the comment. The Statute provides the State Architect with the authority to suspend certification or deny certification renewal, subject to receipt and review of factual complaints.

COMMENT NO. 13: Francie Moeller, Chair CDP Disabilities Caucus (see Comments Tab 13)

13.14(a): Francie Moeller comments on Section 152. The only offenses listed in this section of the proposed regulations are for criminal behavior. This is not up to the State Architect to decide, but instead the offenses and responsibilities to retain records, abide by program rules of the CASP is absent – indicating no assurance or oversight. Where is the oversight committee that was promised in the beginning?

Response: DSA disagrees with the comment. Pursuant to the statute, an Ad Hoc Advisory Committee was established to assist in developing the Certified Access Specialist Program.

13.14(b): Francie Moeller comments on Section 152. Please explain and justify why there is no assurance or oversight, why these points are omitted, why you think they are or are not necessary, where the bill authorizes this neglect, and how you can justify why this is not ambiguous?

Response: DSA disagrees with the comment. The statute provides the State Architect the authority to perform periodic audits of work performed by certified access specialists as deemed necessary to ensure the work performed is factually correct.

13.15: Francie Moeller comments on Section 153. Not one paragraph is provided to require training, education, or abide by any rules about staying consistent with the building codes or laws.

Response: DSA disagrees with the comment. The successful completion of the Certified Access Specialist examination and the completion of 15 Continuing Education Units (CEU's) during each three year period of certification is verification that the CASp has met the minimum level of competency established by the State Architect with which to perform the services of a CASp.

COMMENT NO. 14: Colleen Boyer, ASID, CID (see Comments Tab D14) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 15: Judi Nishimine, ASID (see Comments Tab D15) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 16: Francesca Krauel, Individual (see Comments Tab D16) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 17: Gloria Sharkey, ASID (see Comments Tab D17) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 18: Dale Monday Kolins, ASID (see Comments Tab D18) stated that he agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 19: Betty D. Hyde, American Society of Interior Designers (see Comments Tab D19) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 20: Kathleen M. Zbacnik, ASID, CID (see Comments Tab D20) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 21: Suzanne M. Ward, Allied Member ASID (see Comments Tab D21) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 22: Jean Kezeor, CID, ASID (see Comments Tab D22) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 23: Donna Galvin, CID, ASID (see Comments Tab D23) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 24: Lloyd Princeton, Design Management Company and ASID (see Comments Tab D24) stated that he agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 25: Mimi Roth, ASID, CID (see Comments Tab D25) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 26.01: Robert Woods, S.E., Chief Building Official (see Comments Tab D26) stated that he supports this program but he suggests lowering fees to a level that will not turn away individuals.

Response: DSA notes the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 26.02: Robert Woods, S.E., Chief Building Official (see Comments Tab D26), suggested that in the listing of experience on page 3 under (A)2 and (B)2 Experience, include **Building Officials** in the enumeration of positions that qualify for the certificate.

Response: DSA disagrees with the comment. It is not necessary to change the regulation text because building officials are already eligible based on their work experience and/or education.

COMMENT NO. 27: Ellen Cantor, ASID, CID (see Comments Tab D27) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 28: Jürgen Dostert, Member of CASp Committee, Subject Matter Expert (see Comments Tab D28)

Responses to 28.01 through 28.02

28.01: Jürgen Dostert stated that DSA wrote the current section 114 to clarify that the CASp program should not be construed as a regulation that would allow non-licensed design professionals to perform services that they are otherwise prohibited from providing under separate regulations (here the Architects Practice Act).

Response: DSA agrees with the comment. Language in Section 114 has been made clear regarding the fact that design professionals licensed and/or registered by the State as an architect, landscape architect, civil engineer, and/or structural engineer may provide professional design services permitted by their applicable license or registration. Section 113. CASp Scope of Work addresses this issue raised by the commenter.

28.02: For the same reason the commenter proposes to modify and amend this section to include a subdivision to clarify that CASp individuals can not certify or guarantee compliance of conformance with federal civil rights regulations.

Response: DSA agrees with the comment. A CASp who is other than a design professional may only observe, report and/or defer to others their observations and findings, and has no authority to certify a building or facility as compliant with state and federal laws, codes and regulations.

COMMENT NO. 29: Bertha Hernandez, IDCC (see Comments Tab D29) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 30: Jonathan Adler, Member of CASp Committee, Subject Matter Expert (see Comments Tab D30)

30.01a through 30.02

30.01a: Jonathan Adler stated that he opposes Section 113 of the regulations because the statement that says the work would be done “upon request by a facility owner” is too specific. This statement should be more general because many appropriate inspections, evaluations and reviews are not requested by the owner, such as those by the Attorney General, Dept of Rehabilitation or even by city and county building inspectors.

Response: DSA agrees with the comment. The term “authorized agent” per your comment has been changed to “authorized requesting party.”

30.01b: Jonathan Adler stated that the reviews of plans and investigations of facilities for compliance should not be so specific as to “current” codes and regulations. The statement should be more general because many investigations may be appropriately analyzing plans or looking at whether a facility complies with the codes that were applicable when it was originally designed, constructed or altered.

Response: DSA agrees with the comment. The reference to “current” has been deleted from Section 113 of the regulations.

COMMENT NO. 30: Jonathan Adler, Member of CASp Committee, Subject Matter Expert (see Comments Tab D30)

30.02: Jonathan Adler stated that it is important to stipulate that CA certified access specialists could not certify buildings and programs as compliant with federal requirements. A state certification that an individual holds a certain body of knowledge cannot provide authority to that individual to then certify that buildings meet federal access laws.

Response: DSA agrees with the comment. Language in Section 114 has been made clear regarding the fact that design professionals licensed and/or registered by the State as an architect, landscape architect, civil engineer, and/or structural engineer may provide professional design services permitted by their applicable license or registration. Section 113. CASp Scope of Work addresses this issue raised by the commenter.

COMMENT NO. 31: Douglas R. McCauley, Executive Officer (see Comments Tab D31) stated that the California Architects Board is requesting that the regulations for the Program include a statement regarding the fact that architects and other design professionals are already able to perform the services specified in section 113, CASp Scope of Work, under the purview of their license.

Response: DSA agrees with the comment and has modified the language of the text in Section 114 to indicate that architects and other design professionals are able to perform the services specified in Section 113, CASp Scope of Work, under the purview of their license or registration. The Certified Access Specialist (CASp) certification is only issued to those who have achieved a passing score on the CASp examination and having completed fifteen (15) Continuing Education Units (CEU's) during each subsequent three year period of certification, and after payment of all required fees.

COMMENT NO. 32: Gil de la Pena, Senior Architect (see Comments Tab D32) stated that he has no exceptions or comments to the items listed.

Response: No response necessary.

COMMENT NO. 33: Judy Hallberg, ASID (see Comments Tab D33) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 34: HolLynn D'Lil, (see Comments Tab D34)
Responses to 34.01a through 34.08

34.01(a): HolLynn D'Lil comments on Section 113. The scope of work should not include Federal accessibility codes and regulations as this will require knowledge of whether a facility is compliant with the "readily achievable" requirements of Title III of the ADA, which can only be determined by an examination of the books of the facility.

Response: DSA disagrees with the comment. The reference to State and Federal access codes and regulations is appropriate based on this section of law. A Certified Access Specialist may advise a property owner of the responsibilities for readily achievable modifications, and assist in developing alternatives. Final responsibility still rests with the owner.

COMMENT NO. 34: HolLynn D’Lil, (see Comments Tab D34)

34.01(b): HolLynn D’Lil comments on Section 113. An ability to make financial decisions is beyond the scope of the enabling legislation. In addition, the State of California does not have authority to delegate determination of compliance with a Federal law. This proposed provision will result in a legal challenge to the regulations.

Response: DSA disagrees with the comment. It is for the owner and/or “authorized requesting party” to determine the manner in which to respond to the readily achievable regulations of the Americans with Disabilities Act (ADA).

34.02: HolLynn D’Lil comments on Section 113. Current California access regulations may not be applicable to facilities. A survey of a facility must take into consideration the construction history of that facility. In California only facilities that are newly constructed or remodeled must comply with current code, whatever that code is during the period of construction. There is no requirement to bring facilities into compliance with current code if the facility complied with the code in effect at the time of construction of remodeling. Therefore, the scope of work should include current and past accessibility standards in California.

Response: DSA agrees with the comment. Current regulations are only applicable to new construction as stated by the commenter. Regulations applicable to existing construction are those in effect at the time of construction. The proposed regulations have been modified to recognize this distinction.

34.03: HolLynn D’Lil comments on Section 121. The definition of “access requirement” is too broad. It covers any state, beyond California. It also covers Federal requirements, which, as stated in the comment above on Section 113, should not be covered, and which will lead to a legal challenge of the regulations. The definition should state, “current and historic requirements as found in access specifications of the California Building Code since 1982.”

Response: DSA disagrees with the comment. These regulations are necessitated by the enactment of a California statute and, as such, all references to “state” are California specific.

34.04: HolLynn D’Lil comments on Section 121. The definition of “Access Specialist” is a broad term that should not be limited to a Certified Access Specialist. Only the term Certified Access Specialist should be used to denote someone who has passed the Certified Access Specialist program test.

Response: DSA agrees with the comment. “Access Specialist” has been modified by inserting “Certified” before Access Specialist, indicating that the term “Certified Access Specialist” is limited to and indicative of an individual whose name appears on the Division of State Architects’ current list of Certified Access Specialists.

34.05: HolLynn D’Lil comments on Section 121. The term “CASp” as an acronym for someone who has passed the test of the Certified Access Specialist program test is painfully contrived. A person who has passed the test would not want to be called a “CASp.” They should be called a Certified Access Specialist.

Response: DSA disagrees with the comment. CASp is an acronym for Certified Access Specialist.

34.06: HolLynn D’Lil comments on Section 132. This section has no relevance to the enabling legislation. Why should not someone who has been convicted of a crime be allowed to study and take a test? The enabling legislation does not establish a licensure program. It establishes an opportunity to take a test to certify proficiency in a subject area.

Response: DSA disagrees with the comment. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

COMMENT NO. 34: HolLynn D’Lil, (see Comments Tab D34)

34.07: HolLynn D’Lil comments on Section 134. This section establishes areas of examination that go far beyond the enabling legislation. Only knowledge of California Building Code accessibility regulations should be required. The State of California does not have authority to delegate determination of compliance with a Federal law. This proposed provision will result in a legal challenge to the regulations. Nor should the examination area include sections of California law. Interpretation of law cannot be delegated to individuals who have not passed and obtained a license to practice law.

Response: DSA disagrees with the comment. The reference to State and Federal access codes and regulations is appropriate based on this section of law. A Certified Access Specialist may advise a property owner of the responsibilities for readily achievable modifications, and assist in developing alternatives. Final responsibility still rests with the owner. DSA is not delegating determination of compliance.

34.08(a): HolLynn D’Lil stated that Sections 151 and 152 go far beyond the enabling legislation. What experience or authority does the Division of the State Architect have to determine rehabilitation from crimes such as child abuse or lewd behavior? The Business and Professions Code relates to licensed individuals. This program is not a licensure program.

Response: DSA disagrees with the comment. The Statute provides the State Architect with the authority to suspend certification or deny certification renewal, subject to receipt and review of factual complaints. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

34.08(b): HolLynn D’Lil stated that DSA does not have the jurisdiction to remark on the work of an accessibility consultants who work in the private sector as DSA has repeatedly taken the position that it can only provide interpretations of code as it applies to its jurisdiction, that is, public schools.

Response: DSA disagrees with the comment. The statute provides the State Architect the authority to perform periodic audits of work performed by certified access specialists as deemed necessary to ensure the work performed is factually correct.

34.08(c): HolLynn D’Lil stated that there should be no enforcement section of the regulations. The enabling legislation requires only that a test be administered and a list of those who have passed the test be made available to the public, with periodic audits of the work of those on the list. The enforcement section will be used by trial attorneys to disqualify or to call into question the credibility of access specialists who are acting as expert witnesses during a trial or during legal proceedings. Because of this, anyone who wants to work in the legal area will not want to become a Certified Access Specialist.

Response: DSA disagrees with the comment. The Statute provides the State Architect with the authority to suspend certification or deny certification renewal, subject to receipt and review of factual complaints.

34.08(d): HolLynn D’Lil stated that the enforcement section is not necessary and will lead to abuse. This is not a licensure program, but merely a program to administer a competency test, such as the test provided currently by the International Council of Code Officials for the ANSI.

Response: DSA disagrees with the comment. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

COMMENT NO. 35: May Ann Aguayo, Program Manager (see Comments Tab D35) stated that the Landscape Architects Technical Committee requests the language of Section 114 be modified so that licensed architects, landscape architects, civil engineers and structural engineers shall provide professional design services permitted by their applicable license or registration and that the breadth of their professional license or registration shall not otherwise be limited by Section 113. Clarifying this language will prevent confusion on the part of both consumers and/or plan-check agencies regarding the necessity for an architect or other licensed professional to retain a CASp certified individual on a project, although the licensed professional is already authorized to perform the services as provided in the referenced regulation section

Response: DSA agrees with the comment. The language of the text in Section 114 has been modified to indicate that architects and other design professionals are able to perform the services specified in Section 113, CASp Scope of Work, under the purview of their license or registration. The Certified Access Specialist (CASp) certification is only issued to those who have achieved a passing score on the CASp examination and having completed fifteen (15) Continuing Education Units (CEU's) during each subsequent three year period of certification, and after payment of all required fees.

COMMENT NO. 36: James P. Corn, on behalf of the Consulting Engineers and Land Surveyors of California "CELSOC" (see Comments Tab D36)

Responses to 36.01 through 36.07

36.01: James P. Corn stated that there is absolutely no reference in the proposed guidelines to any transportation facility nor to certification for standards unique to transportation facilities. Absent those provisions, it is CELSOC's view that the proposed regulations will not require the Department of Transportation to begin using Certified Access Specialists, certified pursuant to the specific standards applicable to transportation facilities.

Response: DSA disagrees with the comment. Accessibility standards found in Section 1121 B of the 2007 California Building Code, are specific to transportation facilities.

36.02: James P. Corn stated that at a minimum, the Office of the State Architect should specifically state in the regulations that they are not intended to establish a program for Certified Access Specialists governing access to transportation facilities for purposes of Government Code section 4454(b). Such a clarification would assist in complying with the "clarity" standards in Government Code section 11349.1

Response: DSA disagrees with the comment. Government Code 4459.5 establishes the Certified Access Specialist program (CASp) Government Code 4454 (b) requires California Department of Transportation engineers to achieve certification within 180 days of the establishment of the Certified Access Specialist Program to assure their conformance with the Title 24 of California Building Code, including Section 1121 B Transportation Facilities, and the ADA.

36.03: James P. Corn stated that the proposed regulation in section 136 requires all Certified Access Specialists to undergo a recertification examination every three years. He noted that, most, if not all, professional licensing in California does not require re-examination on an annual two-year or three-year basis in order to continue to practice.

Response: DSA disagrees with the comment. The Statute requires that the certification be valid for a three (3) year period and, further, that renewal applicants be subject to a reassessment of their qualifications.

COMMENT NO. 36: James P. Corn, on behalf of the Consulting Engineers and Land Surveyors of California “CELSOC” (see Comments Tab D36)

36.04(a): James P. Corn stated that because for “transportation facilities” the statute provides that there is a practice requirement, namely, that you must be a Certified Access Specialist in order to do work for the Department of Transportation on transportation facilities (Gov. Code § 4454(b)),

Response: DSA disagrees with the comment in regards to transportation facilities. Government Code 4459.5 establishes the Certified Access Specialist program. Government Code 4454 (b) requires California Department of Transportation engineers to achieve certification within 180 days of the establishment of the Certified Access Specialist Program to assure their conformance with the Title 24 of California Building Code, including Section 1121 B Transportation Facilities, and the ADA.

36.04(b): James P. Corn stated that CELSOC believes that the renewal process should be based upon the payment of a renewal fee and that there should be no re-examination every three years as a condition of maintaining certification. Ironically, the more experience an engineer has after twenty or thirty years of practice, the more difficult it may be for him or her to pass recertification examinations. That requirement would tend to discourage qualified practitioners from maintaining certification.

Response: DSA agrees with the comment in regards to not having re-examination every three years as a condition of maintaining certification. The State Architect has determined that in lieu of a recertification examination, the completion of fifteen (15) Continuing Education Units (CEU’s) of classes in Federal and State access regulation updates, and Universal Design, during the tri-annual period of certification will qualify a certificate holder for recertification. These classes should address changes to the laws and regulations identified in Section 134.

36.05: James P. Corn stated that CELSOC also believes that the proposed regulation conflicts with the “consistency” criteria contained in Government Code section 11349.1. “Consistency” is defined as ‘being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.’ Suffice it to say there is nothing in the statutory provision that requires a recertification examination every three years. The statute does provide for renewal every three years and a process for that renewal, but it excludes any requirement for re-examination every three years.

Response: DSA agrees with the comment. The State Architect has determined that in lieu of a recertification examination, the completion of fifteen (15) Continuing Education Units (CEU’s) of classes in Federal and State access regulation updates, and Universal Design, during the tri-annual period of certification will qualify a certificate holder for recertification. These classes should address changes to the laws and regulations identified in Section 134.

36.06: James P. Corn stated that Section 133(A)(1) of the proposed regulation requires a CASp candidate to complete a minimum of 30 semester units of college course work. This section, however, does not comply with Government Code section 11349.1 because it lacks clarity. Government Code section 11349 defines “clarity” as “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.” Under the proposed regulation, structural engineers are eligible to participate in the Voluntary Certified Access Specialist program, the college course work they have completed should be reflected in the list of required college courses. CELSOC believes that structural engineering course work should be explicitly listed in Section 133(A)(1) so structural engineering course work will qualify to satisfy the educational requirements.

Response: DSA disagrees with the comment. It is not necessary to change the regulation text because engineers are already eligible based on their work experience as are those not yet licensed as engineers.

COMMENT NO. 36: James P. Corn, on behalf of the Consulting Engineers and Land Surveyors of California “CELSOC” (see Comments Tab D36)

36.07: James P. Corn stated that additionally, CELSOC opposes the dollar cost of the renewal in the amount of \$1,400. That seems very excessive. This is an extremely expensive program and far too expensive in CELSOC’s view. CELSOC believes that the \$1,400 renewal fee violates the statutory criteria for “necessity”.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 37: Timothy L. Craggs, Acting Chief, Division of Design, Dept of Transportation (see Comments Tab D37) stated that Caltrans believes that the proposed VCASP Program does not satisfy the above stated requirement because it is not “specific to the standards governing access to transportation facilities” as prescribed in the Government Code. This belief is based upon reading Section 134, “Candidate Examination,” of the proposed Program Regulations. Section 134 indicates that this examination will encompass access requirements, in a variety of areas, from the California Building Standards Code, that go beyond the needs for transportation facilities [i.e. – building features bathrooms, kitchen, etc.); plus, provisions applicable to housing and individual homes]. Testing to access this knowledge has no relevance to transportation facilities.

Response: DSA disagrees with the comment. Accessibility standards found in Section 1121 B of the 2007 California Building Code, are specific to transportation facilities. Additionally, the CASp certification validates that the individual has demonstrated an acceptable level of knowledge of standards governing access to buildings for persons with disabilities. This knowledge is inclusive of transportation facilities.

COMMENT NO. 38: Joseph Partansky, M.B.A. (Health Services Administration) (see Comments Tab D38)

Responses to 38.01 through 38.05

38.01: Joseph Partansky suggested adding “d” – “provide any and all work products or concise summaries to the Office of State Architect, with 60 days of completion” to Section 113.

Response: DSA disagrees with the comment. This is a certification program; the proposed language exceeds the scope of the program as established by the State Architect. The workload proposed by the comment would exceed the resources available to support the program.

38.02: Joseph Partansky suggested preceding current text in Section 114 with “a” and add “b” – “Provide an annotated list of projects and facilities worked on or consulted about, every 6 months.”

Response: DSA disagrees with the comment. This is a certification program; the proposed language exceeds the scope of the program as established by the State Architect. The workload proposed by the comment would exceed the resources available to support the program.

COMMENT NO. 38: Joseph Partansky, M.B.A. (Health Services Administration) (see Comments Tab D38)

38.03: Joseph Partansky suggested that in Section 113, add the words “or leasee or...” after “facility owner”. (Remember under Title III BOTH owner and leasee are responsible for accessibility.)

Response: DSA agrees with the comment. The text of Section 113 has been modified. The term has been changed to “authorized requesting party”.

38.04(a) Joseph Partansky suggested that in subparagraph ‘C’ in Section 133 insert after the word “employment” or “as a recognized volunteer/advocate.”

Response: DSA disagrees with the comment. The reason for requiring employment, as opposed to recognized volunteer/advocacy, is that employment provides a record of work performed with a defined scope in a structured manner. This makes for easy and accurate identification of criteria set forth in the regulations for application into the program.

38.04(b) Joseph Partansky suggested that the 3 years is maintained, but that the words “full time” might need to be changed to ‘significant’ or ‘included in duties’ or..., because most Independent Living Center employees or advocates don’t do just “accessibility” consultation, advocacy or any one task “FULL TIME.” Also, this change should allow ILC Executive Directors and others to provide comments/letters of support and additional applicants to be eligible to take the exam. The decision to certify is an accumatice (sic) decision!

Response: DSA agrees with the comment. Requirement for full-time employment is removed.

38.05: Joseph Partansky suggested modifying Section 136 by adding at the end, “Unless Article 5 (section 151) – Enforcement action is pending and until resolved in favor of the CASp.”

Response: DSA disagrees with the comment. The provisions in Article 5 pertain to actions that are independent of the certification renewal provisions of Section 136. If a CASp or candidate is found to meet the criteria in Section 151, an independent action may be taken to suspend or deny certification renewal. Section 136 verifies compliance with continuing education requirements.

COMMENT NO. 39: Sharon Toji, Individual (see Comments Tab D39)
Responses to 39.01 through 39.04

39.01: Sharon Toji stated that this regulation provides for nothing more than a test, and anyone can get testing materials and cram for a test. All this test really requires for architects and other licensed professionals is money and the time to prepare for the test.

Response: DSA disagrees with the comment. Statute requires the creation of a certification program that requires an applicant to demonstrate competency with regards to accessibility laws, regulations, and codes.

39.02: Sharon Toji stated that now many licensed professionals who have major holes in their knowledge of these items will be able to pay a fairly substantial sum to the DSA, cram for an exam, and call themselves “Access Specialists!” In the meantime, this hefty sum will keep many people who probably have a much better grasp of access out of the running. People with disabilities, for instance, who may have a much greater incentive to really help provide access, will not be able to afford the fee just to get in the door. And, they may not be able to show three years of full-time employment in surveying facilities.

Response: DSA disagrees with the comment. Statute requires the creation of a certification program that requires an applicant to demonstrate competency with regards to accessibility laws, regulations, and codes.

COMMENT NO. 39: Sharon Toji, Individual (see Comments Tab D39)

39.03: Sharon Toji stated that she does not mean to imply that just because someone has a disability, they are more qualified to survey a building than someone who doesn't. They need just as much education in the guidelines as anyone else. However, they do have a unique motivation to do the job well, and a useful perspective, and there ought to be some way that the DSA can offer training that includes them, and then includes the test. Rehabilitation could certainly come up with funds to pay the fees for people to get the training. That is what should be provided for the program sum that DSA is requiring. The test needs to be the culmination of the training. The test should not BE the training!

Response: DSA disagrees with the comment. Statute requires the creation of a certification program that requires an applicant to demonstrate competency with regards to accessibility laws, regulations, and codes.

39.04: Sharon Toji stated that the only program she could support would be one that set out a rather intensive training program, accompanied by materials available on the internet. Until the DSA comes up with such a program, she is really in opposition to this entire regulation and don't believe that it should go into effect.

Response: DSA disagrees with the comment. Statute requires the creation of a certification program that requires an applicant to demonstrate competency with regards to accessibility laws, regulations, and codes.

COMMENT NO. 40: Peter Margen, Principal Consultant, Margen & Associates, CASp - SME, (see Comments Tab D40)

Responses to 40.01 through 40.09

40.01: Peter Margen stated support for Section 111 of the regulations but with the following amendments as shown in underline and strike outs

Section 111. Purpose of the Chapter. These regulations are adopted by the Division of the State Architect to implement and make specific the Voluntary Certified Access Specialist Program commencing with Section 4459.5 of the Government Code.

Participation in this program is voluntary and is designed to ensure that the individuals participating in this certification program are knowledgeable with state and federal accessibility laws and regulations and possess the expertise to promote in those sections of the California Building Code covering access to facilities for persons with disabilities.

The amendments are suggested because Division of the State Architect does not have the experience or expertise to determine knowledge concerning application of state or federal laws and regulations. The intent of the CASp program has always been a simple certification which demonstrates a base level of knowledge concerning a building standard, in this case the California Building Code and not unlike the ICC Accessibility/Usability Specialist certification. This is not a licensure program and the program has continually overstepped its bounds in this regard from its inception several years ago.

Response: DSA disagrees with the comment. The State Architect is directed by Government Code 4450 (c) to adopt codes and regulations for accessibility that are equal to or greater than that in Federal Law.

COMMENT NO. 40: Peter Margen, Principal Consultant, Margen & Associates, CASp - SME, (see Comments Tab D40)

40.02: Peter Margen stated support for Section 113 of the regulations but with the following amendments as shown in underline and strike outs

Section 113. CASp Scope of Work.

Services rendered by a CASp, ~~upon request by a facility owner, may include~~ is limited to the following:

- a) Review of facility plans and specifications for compliance with ~~state and federal accessibility codes and regulations~~ state building codes covering access for persons with disabilities.
- b) ~~Investigate~~ Review of an existing facility for compliance with state and federal accessibility codes and regulations. ~~building codes covering access for persons with disabilities.~~
- e) ~~Conduct accessibility research, prepare accessibility reports, and/or conduct accessibility inspections, as requested.~~

The amendments are suggested because Peter Margen stated that the intent of the CASp program has always been a simple certification which demonstrates a base level of knowledge concerning building standards; in this case the California Building Code.

Subsection A is overly broad and vague. CASp may not always be working for a facility owner. They may be working for a city, county, state, architect, lawyer, etc.

Subsection 3 is overly broad and impossible to oversee within the context of a certification program.

Response: DSA disagrees with the comment. The State Architect is directed by Government Code 4450 (c) to adopt codes and regulations for accessibility that are equal to or greater than that in Federal Law.

40.03: Peter Margen stated support for Section 114 of the regulations but with the following amendments as shown in underline and strike outs.

Section 114. CASp Scope of Work ~~Limited to Design Professionals.~~

a) Only design professionals licensed and/or registered by the State of California as an architect, landscape architect, civil engineer, and/or structural engineer shall provide professional design services permitted by their applicable license or registration.

b) A CASp can provide reasonable verification that an existing building or facility complies, or in the case of plan review will comply with the accessibility provisions of the California Building Code based on the date of construction or alteration. A CASp cannot certify or guarantee that a facility, program, service, or activity is, or will be in full compliance with any other disability-related state or federal laws and regulations.

The amendments are suggested because Peter Margen stated that the purpose of the CASp certification is to demonstrate a minimum level of proficiency and understanding of the accessibility provisions of the California Building Code. It was never intended to certify that an individual has the knowledge or ability to conduct in-depth analysis of program or legal requirements as they apply to the forensic evaluation of programs, services or facilities based on past, current or proposed use. A CASp certificate, like the ICC certification for Accessibility Usability Specialist demonstrates a base level of knowledge, however experience skills and abilities will differ among individuals who receive said certification. Also, it is not the place of a state program to interpret or cover federal requirements. Finally, as it was made clear in all the public meetings, it never has been the purpose of CASp to certify buildings or facilities to shield building owners from complaints or lawsuits based on alleged violations of state or federal laws protecting the rights of individuals with disabilities.

Response: DSA disagrees with the comment. This section is limited to the work of design professionals licensed by the State of California. Section 113. CASp Scope of Work describes the services that a Certified Access Specialist may provide; review, investigate and conduct research on or for facility compliance. The successful completion of the examination attests to a candidate's minimal level of proficiency.

COMMENT NO. 40: Peter Margen, Principal Consultant, Margen & Associates, CASp - SME, (see Comments Tab D40)

40.04(a): Peter Margen stated support for Section 121 of the regulations but with the following amendments as shown in underline and strike outs.

“Access Requirement” means a provision for disability access in ~~any federal or state law, regulation, building code or government standard, applicable to the design, construction or inspection of facilities~~ the current or prior edition of the California Building Code.

The amendments are suggested because Peter Margen stated that the purpose of the CASp certification is to demonstrate a minimum level of proficiency and understanding of the accessibility provisions of the California Building Code.

Response: DSA disagrees with the comment. The candidate examination includes the ADA Accessibility Guidelines. A Certified Access Specialist may provide services to a property owner addressing ADA requirements if requested. The Certified Access Specialist may inform the owner of the federal civil rights application of the ADA, and how that differs from building code enforcement requirements.

40.04 (b): Peter Margen stated support for Section 121 of the regulations but with the following amendments as shown in strike outs.

~~“Access Specialist” means any individual currently holding a certificate of Certified Access Specialist.~~

Mr. Margen suggested striking out the definition for Access Specialist because this is a job title that many people have used in some cases for more than 30 years. Like AIA doesn’t regulate the use of the term “architect”, CASp has no business defining the term access specialist to be limited to one with a Certification. There are many other types of accessibility specialists out there who work in the areas of program, employment, policy or telecommunications.

Response: DSA agrees with the comment. The term access specialist has been changed to certified access specialist, by doing so this term no longer relates to a job title as stated by the commenter.

40.05: Peter Margen stated support for Section 131 of the regulations but with the following amendments as shown in strike outs.

In order to apply to be a CASp, candidates must submit a completed Candidate Eligibility Application form to establish eligibility for the certification examination.

Authority: ~~Section 480 and 481, Business and Professions Code, and~~ Section 4459.5 Government Code

Reference: ~~Section 493, 480, 481, 7066, 7069, 7073, and 7153.1, Business and Professions Code~~

The amendments are suggested because Peter Margen stated that the Business and Professions Code regulates licensed professionals. CASp is not a license program.

Response: DSA disagrees with the comment. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

40.06: Peter Margen stated that he opposes Section 132 because CASp is not a licensure program. Former or current convicts may want to obtain the voluntary certification and should be afforded the opportunity to do so.

Response: DSA disagrees with the comment. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

COMMENT NO. 40: Peter Margen, Principal Consultant, Margen & Associates, CASp - SME, (see Comments Tab D40)

40.07: Peter Margen stated support for Section 133 of the regulations but with the following amendments as shown in underline and strike outs.

~~Minimum candidate education and experience eligibility for examination~~ program acceptance may be satisfied by passing the CASp written examination.

He further struck out all the listed education and experience criteria in Section 133 along with a listing of the variety of areas covered in the examination to assess each candidate's knowledge of access requirements in Section 134.

The amendments are suggested because Peter Margen stated that the amendments are suggested because Peter Margen stated that the Business and Professions Code regulates licensed professionals. CASp is not a license program. CASp is not a licensure program. Anyone should have the opportunity to take the test and pass or fail. CASp is a voluntary certification. That's it!

Response: DSA disagrees with the comment. The statute provides the State Architect the authority to determine the minimum criteria a person is required to meet in order to take the Certified Access Specialist examination.

40.08(a): Peter Margen stated support for Section 151 of the regulations but with the following amendments as shown in strike outs.

a) The State Architect or Designee may suspend certification or deny certification renewal when any of the following conditions exist:

1. The requirements of this subchapter have not been satisfied.
2. The certificate holder or recertification candidate has been convicted of a crime considered to be substantially related to the qualifications, functions or duties of a person holding a certificate to perform the functions authorized by the certificate in a manner consistent with the public health, safety, or welfare.
~~Such crimes shall include but not be limited to the following:~~
 - ~~(a) A conviction of child abuse.~~
 - ~~(b) A conviction as a sex offender.~~
 - ~~(c) The conviction of any crime involving narcotics, dangerous drugs, or Voluntary CASp Program Regulations 3 dangerous devices, as defined in Section 4022 of the Business and Professions Code.~~
 - ~~(d) A conviction for assault and/or battery or lewd conduct.~~

The amendments are suggested because Peter Margen stated that DSA should not serve as judge or jury. Without any moral judgment, a sex offender or someone convicted of a crime involving drugs might pass the certification and therefore should be afforded the opportunity to do so. It is always incumbent upon an employer or prospective client to check on the background and qualifications of someone they are thinking about hiring.

Response: DSA disagrees with this comment. Although DSA is not an employer of the Certified Access Specialist or a prospective client of the Certified Access Specialist, DSA is providing the certification. The certification does not just encompass the minimum knowledge, skills and abilities necessary to effectively perform the tasks, but carries the implied perception that DSA has done its due diligence in protecting the health and safety of the public through its certification process.

COMMENT NO. 40: Peter Margen, Principal Consultant, Margen & Associates, CASp - SME, (see Comments Tab D40)

40.08(b): Peter Margen stated support for Section 151 of the regulations but with the following amendment as shown in strike out on subsection 3 of Section 151.

~~3. The State Architect has received a complaint regarding the work of a CASp and has determined the work has not been performed to generally accepted industry standards.~~

The amendment is suggested because Peter Margen stated that DSA does not have a process in place for investigation and what are “generally accepted industry standards.” This whole section is too vague and overly broad.

He further stated that the notice of suspension of a certificate or denial of a certification renewal shall be in writing and shall specify the basis for the suspension or denial of the certification.

Response: DSA agrees with the comment. The term “generally accepted industry standards” has been removed.

40.09: Peter Margen comments on Sections 152 and 153 that the process to be followed after is overly cumbersome and unnecessary as a certification program. CASp should be what it was intended to be when originally proposed; a simple certification. People hold certifications in all kinds of things; however it doesn't make them an expert. It is always the responsibility of someone hiring a consultant to check out the background and qualifications of someone they are thinking about hiring to see if it is good fit. Let's not make CASp what it's not. Start out simple and expand as needed down the road.

Response: DSA disagrees with the comment. It is necessary to maintain credibility of the Program. If a complaint is received regarding the competency of Certified Access Specialists a process must be in place to address performance.

COMMENT NO. 41: Richard Skaff, Executive Director, Designing Accessible Communities, a non-profit organization (see Comments Tab D41)

Responses to 41.01 through 41.11

41.01: Richard Skaff stated that he opposes developing a new “certification program” because California already has licensing programs for architects and contractors but they are not managed effectively. Effort should go towards ensuring that existing licensed professionals meet the mandates of their license. Code violations typically found in all new construction and remodel projects could be reduced along with the number of lawsuits filed against building/business owners.

Response: DSA disagrees with the comment. The statute requires the State Architect to establish a voluntary Certified Access Specialist program.

41.02: Richard Skaff stated that it appears that the proposed CASp testing program that will be used to "certify" an "Access Specialist" but doesn't appear to require that those taking and passing the CASp tests also clearly understand how to apply California access codes to building/facility projects. Without a true understanding of the ergonomics of disability, one can't possibly be expected to know how to assure that our state access codes will be applied correctly.

Response: DSA disagrees with the comment. The examination determines the candidate's knowledge of access law and regulations as specified in Section 134. Candidate Examination. Successful passage of the examination ensures that a minimum knowledge of experience has been demonstrated.

COMMENT NO. 41: Richard Skaff, Executive Director, Designing Accessible Communities, a non-profit organization (see Comments Tab D41)

41.03: Richard Skaff stated that the scope of work should not include Federal accessibility codes and regulations as this will require knowledge of whether a facility is compliant with the "readily achievable" requirements of Title III of the ADA, which can only be determined by an examination of the financial books of the facility by a certified accountant. The ability to make financial decisions about a building is beyond the scope of the enabling legislation. In addition, the State of California does not have authority to delegate determination of compliance with a Federal law. This proposed provision will result in a legal challenge to the regulations.

Response: DSA disagrees with the comment. The reference to State and Federal access codes and regulations is appropriate based on this section of law. A Certified Access Specialist may advise a property owner of the responsibilities for readily achievable modifications, and assist in developing alternatives. Final responsibility still rests with the owner.

41.04(a): Richard Skaff stated that a survey of a building/facility done by a CASp must take into consideration the construction history of that facility. In California only facilities that are newly constructed or remodeled must comply with current code, whatever that code is during the period of construction. Based on California Building Code, Title 24, there is no requirement to bring facilities into compliance with current code if there is no active construction taking place and the facility complied with the code in effect at the time of construction or remodeling.

Response: DSA agrees with the comment. Current regulations are only applicable to new construction as stated by the commenter. Regulations applicable to existing construction are those in effect at the time of construction. The proposed regulations have been modified to recognize this distinction.

41.04(b): Richard Skaff questioned if the proposed CASp test take into account that in California, there is a requirement that the last three years of construction history be reviewed to determine whether the building in question has exceeded the "cost of living index" as it relates to required path-of-travel accessibility to the area of remodel? In fact, what are the "scoping" questions?

Response: DSA disagrees with the comment. Contents of the examination are confidential. Section 134 of the regulations identifies the areas of knowledge to be covered by the examination. As to the requirement that the last three years of construction history be reviewed, to determine if the cost of living index has been exceeded, that is a requirement that must be met by any party proposing construction activity in an existing building.

41.05: Richard Skaff stated that the definition of "access requirement" is too broad, covering Federal requirements, which should not be covered. If they are, this will lead to a legal challenge of these regulations. The definition should state, "current and historic requirements as found in access specifications of the California Building Code since 1982."

Response: DSA disagrees with the comment. The State Architect is directed by Government Code 4450 (c) to adopt codes and regulations for accessibility that are equal to or greater than that in Federal Law.

41.06: Richard Skaff stated that the definition of "Access Specialist" is too broad a term. That title should not be limited to a Certified Access Specialist. There are many other types of accessibility specialists who work in the areas of program, employment, policy or telecommunications access and are called "access specialists" and should be allowed to continue using that title.

Response: DSA agrees with the comment. "Access Specialist" has been modified by inserting "Certified" before Access Specialist, indicating that the term "Certified Access Specialist" is limited to, and indicative of, an individual whose name appears on the Division of State Architects' current list of Certified Access Specialists.

COMMENT NO. 41: Richard Skaff, Executive Director, Designing Accessible Communities, a non-profit organization (see Comments Tab D41)

41.07: Richard Skaff stated that Section 132 has no relevance to the enabling legislation. Why shouldn't someone who has been convicted of a crime be allowed to study and take the CASp test? The enabling legislation doesn't establish a licensure program. It establishes an opportunity to take a test to certify proficiency in a subject area.

Response: DSA disagrees with the comment. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

41.08: Richard Skaff stated that Section 134 establishes areas of examination that go far beyond the enabling legislation. Only knowledge of California Building Code accessibility regulations should be required. The State of California does not have authority to delegate determination of compliance with a Federal law. This proposed provision will result in a legal challenge to the regulations. Nor should the examination area include sections of California law. Interpretation of law cannot be delegated to individuals who have not passed and obtained a license to practice law in California.

Response: DSA disagrees with the comment. The State Architect is directed by Government Code 4450 (c) to adopt codes and regulations for accessibility that are equal to or greater than that in Federal Law. Accepted: The language of the text in Section 114 has been modified to indicate that architects and other design professionals are able to perform the services specified in Section 113, CASp Scope of Work, under the purview of their license or registration. The CASp certification is only issued to those who have achieved a passing score on the CASp examination and complete fifteen (15) Continuing Education Units (CEU's) during each subsequent three year period of certification.

41.09: Richard Skaff stated that Sections 151 and 152 go far beyond the enabling legislation. What experience or authority does the Division of the State Architect have to determine rehabilitation from crimes? The Business and Professions Code relates to licensed individuals. The CASp is not a licensure program.

Response: DSA disagrees with the comment. The Statute provides the State Architect with the authority to suspend certification or deny certification renewal, subject to receipt and review of factual complaints. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

41.10: Richard Skaff stated that DSA does not have the jurisdiction to remark on the work of an accessibility consultants who work in the private sector as DSA has repeatedly taken the position that it can only provide interpretations of code as it applies to its jurisdiction, that is, public schools and state owned or leased buildings. How will DSA fund and staff the investigations of Certified Access Specialists in a timely and fair manner?

Response: DSA disagrees with the comment. The statute provides the State Architect the authority to perform periodic audits of work performed by certified access specialists as deemed necessary to ensure the work performed is factually correct. Complaint review and processing will be conducted by staff of the CASp program. The enabling statute authorizes a fee to support program operation costs.

COMMENT NO. 41: Richard Skaff, Executive Director, Designing Accessible Communities, a non-profit organization (see Comments Tab D41)

41.11: Richard Skaff stated that there should be no enforcement section of the regulations. The enabling legislation requires only that a test be administered and a list of those who have passed the test be made available to the public, with periodic audits of the work of those on the list (how will the audits be funded?).

The enforcement section will be used by trial attorneys to disqualify or to call into question the credibility of access specialists who are acting as expert witnesses during a trial or during legal proceedings. Because of this, anyone who wants to work in the legal area will not want to become a Certified Access Specialist. The enforcement section is not necessary and will lead to abuse. Again, this is not a licensure program, but merely a program to administer a competency test, similar to the test provided currently by the International Council of Code Officials. Also, it never has been the purpose of CASp to certify buildings or facilities to shield building owners from complaints or lawsuits that are based on alleged violations of state or federal laws protecting the rights of individuals with disabilities.

Response: DSA disagrees with the comment. Statute allows the State Architect to conduct audits of the work performed by Certified Access Specialists. The enforcement provisions are necessary to support this responsibility utilizing the fees authorized by the enabling statute. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

COMMENT NO. 42: Judy Henn, President of the Interior Design Coalition of California (see Hearing Transcript pages 8 and 9) stated that she agrees with this regulation and is in support of it.

Response: No response necessary.

COMMENT NO. 43.01: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript pages 20 and 21) stated that the reasons or rationale or process that was used in determining the amount of fees were not provided in the ISOR. Suggest that the FSOR include some sort of a cost, not just to establish the fact that fees needed to be charged but justification as to why the fees are so high.

Response: DSA notes the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 43.02: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript pages 21 and 22) stated that licensing has generally been regarded as a property right of people. That once a license has been issued, it is a property right and cannot be taken away without due process of law. It can be said the same about certification becoming a property right. So how can the State Architect actually remove that property right with any kind of due process before actually making that determination.

Response: DSA disagrees with the comment. Per statute, upon receipt and verification of the factual accuracy of a written compliant, the State Architect may determine to suspend or deny a certificate or deny renewal of a certificate. GC Section 4459.5 requires the State Architect to establish and publicize a voluntary certified access compliance specialist program.

COMMENT NO. 43.03: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript page 22) stated that language in Section 153 should be clear in distinguishing what happens before, as part of the due process that the state has to follow before removing certification, as opposed to what actually happens during a bona fide appeal process. Mark Smith's concern is that the state will follow due process before they remove the property rights of people who have already attained certification.

Response: No response necessary. Section 153. Filing an Appeal includes all the steps necessary to file an appeal of the action of the State Architect.

COMMENT NO. 43.04: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript pages 22 and 23) comments on Section 112, "Authority" and also on Section 151 wherein it states that the State Architect or his designee has the authority to remove certification. Mark Smith's comments pertaining to the referenced language in Sections 112 and 151 is that he is concerned that the whole process may be impacted by undue influence of political process in the future. He would like to see that the FSOR address how the program is protected from undue influence by the State Architect or other people of the political community.

Response: DSA disagrees with the comment. The program regulations set the requirements under which the program will operate. The regulations as written do not allow the State Architect to make adjustments to the program unless the regulations are changed through a formal rulemaking process.

COMMENT NO. 43.05: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript page 43) stated that the language "generally accepted industry standard" is not developed enough to really be effective. To include in FSOR a description or identification of the standards of conduct that are going to be applied in determining whether an access specialist has performed in a competent manner or not.

Response: DSA agrees with the comment. Reference to "industry standards" has been deleted from Section 151(a)3 of the regulations.

COMMENT NO. 44.01: Teresa Favuzzi, Executive Director of the California Foundation for Independent Living Centers (see Hearing Transcript page 16) stated the concern that a large number of businesses and organizations will seek the services of a CASp that will not actually be the owners of the facility so the language under Scope of Work in Section 113 where it reference 'facility owner' be broaden to define who actually will be seeking services from a CASp and not limit it to facility owners.

Response: DSA agrees with the comment. The term "authorized agent" has been changed to "authorized requesting party".

COMMENT NO. 44.02(a): Teresa Favuzzi, Executive Director of the California Foundation for Independent Living Centers (see Hearing Transcript pages 17 and 18) stated that the language "full-time employment" used in Section 131 under 'C' for application eligibility, might be too restrictive and can exclude the access experts who are self-employed and working as independent consultants. Recommend removing the full-time requirement. If the full-time employment requirement is not removed, spell out accessible means of proving what full-time employment from an independent self-employed consultant would qualify so as not to create barriers for folks who are actually highly qualified to do this work.

Response: DSA agrees with the comment. Requirement for full-time employment is removed.

COMMENT NO. 44.02(b): Teresa Favuzzi, Executive Director of the California Foundation for Independent Living Centers (see Hearing Transcript pages 17 and 18) stated that there is a preference for the use of "disability community" as opposed to "disabled community" in Article 3, Section 131.

Response: DSA agrees with the comment. "Disabled community" will be changed to "disability community." However, the language referenced by the commenter does not occur in Section 131 but in Section 133(C).

COMMENT NO. 44.03: Teresa Favuzzi, Executive Director of the California Foundation for Independent Living Centers (see Hearing Transcript page18) stated that her organization has some strong concerns about the fee structure. It is excessive and will be a barrier for folks who are qualified to actually decide whether or not they want to go for certification. Recommend that the fee structure be lowered.

Response: DSA noted the suggested amendment on the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 45.01: Jon Lonberg (see Hearing Transcript page19) stated that the fee structure as presently proposed would, in fact, present a hardship for several in that category.

Response: DSA notes the comment. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 45.02: Jon Lonberg (see Hearing Transcript pages 45 and 46) stated his concern that some of the important features in earlier versions of this document appear to be missing or minimized in the final. Therefore, the document will not be well-reasoned or well-rounded clearly spelling out the duties, responsibilities, and the corrective measures that would be taken.

Response: DSA disagrees with the comment. The regulations include all necessary elements for a viable program. The final regulations were modified to comply with the specific statutory provisions in 4459.5

COMMENT NO. 45.03: Jon Lonberg (see Hearing Transcript pages 50 and 51) stated that those who participated in the early development of the CASp program as subject matter experts helping on the testing process were assured repeatedly that those who worked on both committees would be receiving a nominal two-year certification to begin with. His concern is that he heard that no one will be granted the provisional two-year certification for the effort and the work that was put in. Suggests that it would be appropriate to stand by the assurances that they received while working on the program and that DSA put this in the mix.

Response: DSA agrees with the comment. Consideration of extending a nominal two (2) year CASp certification to the Subject Matter Experts (SME's) that assisted in the development of the CASp examination is under consideration by the State Architect.

COMMENT NO. 46.01: Ben Rockwell (see Hearing Transcript page 19) stated the fee structure will affect those on lower income who have been working for years because they will not be able to afford the fees. Suggests that maybe to find some way to make it possible for those that are on lower income that have been working for years to be able to do so without having financial hardship.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 46.02: Ben Rockwell (see Hearing Transcript pages 19 and 20) stated he wants to make sure persons with disabilities will still have complete access, and be able to either get full enforcement of the access laws through the city, state, or through the court system, as necessary, to make sure that we have full access to all businesses that are open to the public. This includes all services.

Response: DSA disagrees with the comment. Mr. Rockwell's comment addresses a desire for full access and full enforcement of access laws. The program is not intended to address access in individual buildings or facilities as they are constructed or modified. The program does not address local or state government enforcement of access regulations.

COMMENT NO. 47.01: Laura Williams, President of Californians for Disability Rights (see Hearing Transcript page 29) stated she is very concerned that any kind of an automatic audit or a periodic check of a person's work to make certain that it's not just a fraudulent piece of work that is allowing someone to not do the access work that they should be doing, is missing from this regulations. Having experienced access consultants telling businesses that, "Oh you don't need to do that," and for specious reasons, she is very concerned that this program not foster more of that action.

Response: DSA disagrees with the comment. Statute allows the State Architect to conduct audits of the work performed by Certified Access Specialists. The enforcement provisions are necessary to support this responsibility utilizing the fees authorized by the enabling statute. Based on a review of prior court rulings, certification programs that include an examination are considered equivalent to a licensure program.

COMMENT NO. 47.02: Laura Williams, President of Californians for Disability Rights (see Hearing Transcript page 30) stated that the fees should be reduced to make it possible for people with low income to participate and become a Certified Access Specialist.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 47.03: Laura Williams, President of Californians for Disability Rights (see Hearing Transcript page 30) stated she is concerned that in the overall oversight and the examination that is set forth that will certify the specialist, she is not seeing a lot in these short regulations that speak to, other than a whole body of language, at what level of experience and actually understanding what access is about.

Response: DSA disagrees with the comment. The examination content is based upon standards governing access to buildings for persons with disabilities, including those referenced in Section 134.

COMMENT NO. 47.04: Laura Williams, President of Californians for Disability Rights (see Hearing Transcript page 30) stated she is concerned that the certification process is more regulation and code driven and less on civil rights. She is very concerned that there is not in the regulations enough that addresses the civil rights of individuals with disabilities and the potential for discrimination when all of those are not met.

Response: DSA disagrees with the comment. The examination content is based upon standards governing access to buildings for persons with disabilities, including those referenced in Section 134.

COMMENT NO. 48.01: Ruthie Goldkorn, established No Barriers Disabled Access Consulting and Advocacy Services (see Hearing Transcript pages 33 and 34) stated she is concerned that she cannot see how this process is going to ensure that enforcement at the lowest level, at the municipal level, which is the most necessary be carried out.

Response: DSA does not agree with the comment. The statute requires the State Architect to “establish...a program for voluntary certification.” This regulation clarifies that a certified access specialist (9CASp) may observe, report and defer to others, their observations and findings. This is not an enforcement program.

COMMENT NO. 48.02(a): Ruthie Goldkorn, No Barriers Disabled Access Consulting and Advocacy Services, (see Hearing Transcript page 34) stated she is concerned about the fees.

Response: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application Fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal Fee: \$500.00.

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 48.02(b): Ruthie Goldkorn, established No Barriers Disabled Access Consulting and Advocacy Services (see Hearing Transcript page 34) stated that she sees the test content as one of the biggest issues.

Response: DSA disagrees with the comment. The examination content is based upon standards governing access to buildings for persons with disabilities, including those referenced in Section 134.

COMMENT NO. 48.02(c): Ruthie Goldkorn, No Barriers Disabled Access Consulting and Advocacy Services. (see Hearing Transcript page 34) stated that she sees the standards as one of the biggest issues.

Response: DSA disagrees with the comment. The standards in Section 134 encompass access regulations at the local, state and federal level. DSA has determined that knowledge of these regulations is applicable for a Certified Access Specialist.

COMMENT NO. 49: Mark Smith, DSA Oakland Regional Office (see Hearing Transcript page 28) wants clarification that certification is not given out just on the basis of having passed the exam but also only after the certification fee has been paid.

Response: DSA agrees with the comment. Language in section 141(a)3. has been modified to indicate that the certification fee has to be paid prior to receiving certification.

COMMENT NO. 50 Mark Smith, DSA Oakland Regional Office (see Hearing Transcript page 45) requests that the regulations in section 153 be modified to include in this statement also, what statement of conduct has been violated, and to nail this down because if the program is going to suspend people for a particular standard, we have to identify what standard is that has been broken. DSA is to find and identify those standards of practice as they exist in today's world.

Response: DSA disagrees with the comment. The processes involved in an appeal in this program are aligned with the processes employed by Office of Administrative Hearing. The grounds required in Section 151 will have been identified and validated prior to any appeal. Therefore, the language in section 153 is adequate as is.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FIRST 15 DAY PERIOD OF NOVEMBER 29, 2007 THROUGH DECEMBER 14, 2007.

COMMENT NO. 1: Dawn Anderson, AIA, CSI, Principal Architect of Architect Planning Inspection (see Comments Tab F1) is concerned that the fees charged for this program is too high and that such certification fees should be on par with other state cert. fees, ICC testing fees, etc...if not, the DSA program fees could be perceived as an elitist, misleading, random and disingenuous with an expectation that only DSA specialists will have some kind of market advantage.

RESPONSE: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal fee: \$500.00

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENT NO. 2: Chris Lawrence, HM Architects (see Comments Tab F2)
Responses to 2.01 through 2.05

2.01: Chris Lawrence commented that the definition for Certified Access Specialist should be modified to read "...means an individual holding a current certificate..."

RESPONSE: DSA disagrees with the comment. Specifying current is redundant in section 121. Definition of Certified Access Specialist. To add the word "current" before the word "certificate" in the sentence "an individual holding a certificate..." is redundant because a Certified Access Specialist is already defined as "an individual **currently** holding a certificate.."

2.02: Chris Lawrence noted that there is no consistency in the use of capitalization of the word "voluntary", he suggested that since the title of Certified Access Specialist does not include the term "voluntary" it may be appropriate that the word is not capitalized. The conflict may be that "voluntary" is part of the Subchapter's title.

RESPONSE: DSA agrees with the comment. The word "voluntary" shall be consistently written in the lower case throughout the regulations, except for when it is used as part of the Subchapter's title.

COMMENT NO. 2: Chris Lawrence, HM Architects (see Comments Tab F2)

2.03: Chris Lawrence noted grammatical errors in section 136 where in the seventh line a period appears after the word “Design” and most likely the intention was to have a comma after the word, not a period. In the ninth line, the word “the” following the semi colon is in appropriately capitalized.

RESPONSE: DSA agrees with the comment. Sentence structure in Section 136 has been corrected to reflect proper use of grammar.

2.04: Noted that the title of Certified Access Specialist is not capitalized in section 151, paragraph a.3 as it is in all other cases within the document.

RESPONSE: DSA agrees with the comment. The title of Certified Access Specialist shall be capitalized in Section 151, paragraph a.3.

2.05 Noted that throughout section 153, the State Architect is referred to as “he”. There may be those who would have this read “he/she.”

RESPONSE: DSA agrees with the comment. The possessive pronoun for the State Architect in section 153 shall include “her” along with the existing pronoun “his.”

COMMENT NO. 3: Douglas R. McCauley, Executive Officer, California Architects Board (see Comments Tab F3) is concerned that section 114 is inappropriately restrictive. Specifically, the language in the second sentence of section 114 indicates that design professionals’ practices may not be “limited to” those services described in section 113. There is no statutory authority for such a restriction. Design professionals’ respective scopes of practice are contained in their licensing statutes, which establish the parameters for the services they may legally provide. Absent specific statutory authority, these regulations have no basis for limiting the practices of architects or other design professionals. Therefore, the Board requests that this particular sentence be amended as follows: Their services may be inclusive of ~~but not limited to~~ Section 113.

RESPONSE: DSA agrees with the comment. The language of the text in Section 114 has been modified to indicate that architects and other design professional are able to perform the services specified in section 113, under the purview of their license or registration, by deleting the words “but not limited to.”

COMMENT NO. 4: Carol B. Loeffler, individual (see Comments Tab F4) is concerned that requiring full-time employment in section 133 can be considered discrimination that only those who work in full time employment can apply. The issue is not that you want someone full time, but you want someone who is experienced.

RESPONSE: DSA agrees with the comment. The words “full-time” in section 133 A(2), B(2) and C, are deleted to avoid limiting application eligibility to only those working full time. There are those who cannot work full time due to a number of reasons.

COMMENT NO. 5: Richard Halloran, Building Inspector (see Comments Tab F5) is concerned about the fees being too high and thus may prohibit an entire section of the building inspection enforcement community from participation in the program.

RESPONSE: DSA notes the comments. DSA reviewed the proposed fees resulting in an adjustment of fees as follows:

Application fee: \$500

Examination fee: \$800

Certification fee: \$300

Tri-annual CEU Verification and Certification Renewal fee: \$500.00

This is the minimum level of fees necessary to support the program operating costs, given the projected level of participation. If more people apply to be certified, the fees may be able to be lowered in the future.

COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC.

The modified text was made available to the public from November 29, 2007 through December 14, 2007. The Division of the State Architect received comments on the modified text and has responded to the comments.

ALTERNATIVES DETERMINATION

The State Architect has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

[Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting for the State Architect's reasons for rejecting any proposed alternatives.]

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.